IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 676 OF 2005

Gangadhar Kashinath Masare ... Appellant (Ori.Plaintiff)

V/s

Kalias Vithal Masare & ors. ... Respondents

Mr. Vijay J. Shiktode for the appellant.

Mr. S.M. Oak for Respondent Nos. 1 to 3.

CORAM: P.V. KAKADE, J.

DATED: 10TH OCT., 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Pandharpur, dated 26.4.2005 dismissing the appeal and thereby dismissing the suit setting aside the order passed by the Trial Court who had partly decreed the plaintiff's suit to the extent of issuance of perpetual injunction.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff had filed the suit for declaration of his ownership title and consequential perpetual injunction against the defendants in respect of the suit property which was sought to be obtained by virtue of the will dated 17.12.1993.

Defendants contested the suit inter-alia denying the plaintiff’s allegations and sought dismissal of the suit.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that though the plaintiff had failed to prove that he was owner of the suit property by virtue of the will deed executed by one Vitthal, he was found in possession of the suit property and, therefore, defendants were restrained perpetually from obstructing the plaintiff’s possession.

5. The appeal was carried to the lower appellate Court. The learned Addl. District Judge, after hearing both sides, dismissed the appeal. Hence the present appeal.

7. At the outset, it is to be noted that there is absolutely no substantial question of law involved in

this appeal. Both the Courts below have recorded concurrent findings to the effect that the will deed dated 17.12.1993 executed by one Vitthal is not legal and valid and plaintiff cannot get any declalration sought by virtue of the said document. The learned counsel for the appellant submitted that the will was registered and, therefore, it must be held to be proved. However, it is needless to mention that the law regarding proof of will is quite clear and both the Courts below have come to the conclusion that the will is not proved vide relevant provision of Indian Succession Act and Indian Evidence Act. However, the concurrent findings to the effect that the will is not proved and, therefore, consequent ownership title is also not established.

So far as the possession of the plaintiff is concerned, it appears from the record that mere entries and 7/12 extract would not be sufficient to show lawful possession of the plaintiff. In fact 7/12 extract in respect of the suit land do not show that even after death of Vitthal, appellant-plaintiff was in possession of the suit land. The 7/12 extract for 1994-95 show that the name of deceased Vitthal appears alongwith respondent No.4 and moreover, the appellant has admitted

that even after death of Vitthal, mutation entries are not sanctioned in his name on the basis of will deed. If this is the position, it cannot be said that the possession was with the plaintiff. Suffice to say that both the Courts below have recorded concurrent findings in respect of the ownership title. Similarly, the lower appellate Court also decided the aspect of possession of the suit property on the basis of available evidence and, as such, the appeal deserves no interference.

In the result, the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 1150 of 2005 also stands dismissed with no order as to costs.

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